

BDCP Coordination Meeting February 16, 2010 minutes by Michael Nepstad

I was at the BDCP Coordination Meeting yesterday and here's the updates/information you may need to know. The BDCP Coordination meeting is for the five Federal agencies to share information, and is chaired by David Nawi, a DOI senior advisor to the secretary of interior. EPA was invited but unable to participate in this meeting. These meetings are weekly (Tuesdays 9am), and I have been volunteered to attend all of them. I'll be following up with you on the action items as quickly as I can.

Attendees:

David Nawi – DOI
Patti Idlof – Reclamation
Federico Barajas – Reclamation
Ron Milligan – Reclamation
Chuck Jachens – Reclamation
Mary Grim – USFWS
Dan Castleberry – USFWS
Michael Nepstad – USACE
Michael Shultzer (spelling?) – USGS
Michael Jewell – USACE (by phone)
Colonel Chapman – USACE (by phone)
Melane Roland – NMFS (by phone)
Rod McGuinness – NMFS (by phone)
Maria Rae – NMFS (by Phone)

Summary of Meeting

1. Schedule:

- The current schedule is that by mid December 2010 there will be 1) a completed public draft of the BDCP HCP/NCCP and 2) an administrative draft BDCP EIS/EIR which has not been reviewed or approved by the five Federal agencies.
- Schedule is still subject to change. DWR wants everything finalized by mid December 2010, while NMFS unsure if even admin draft documents are possible by then.
- **Our section 408 process may not have been included in any calculation of when an admin draft EIS/EIR could be completed.**

2. HCP Confusion

- Evidentially Marc Ebbin of DWR has been not been describing how the HCP and ESA process would work in a way that is consistent with how the Federal agencies think it will work. As a result, there is confusion among the PREs (potentially regulated entities, as the contractors participating in the BDCP call themselves) as to who and what will be covered by the HCP. For example, DWR has told the Westlands Water District that they will be covered in the HCP, while the federal agencies feel that WWD will not because they are a Federal CVP contractor and will need to receive take authorization for water delivery through a section 7 consultation. This will be a big issue, as under the HCP there are greater assurance of uninterrupted water supply than there is under a section 7 consultation.
- **We do have a role to play in the BDCP HCP development. The approval of the HCP by NMFS and USFWS is predicated upon a determination that the actions specified in the plan can be implemented. If some of the things identified in their plan look like things we

would not likely approve, we should be letting them know before they reach the public draft stage. This would include the things for which they are not going to ask for USACE permits in the near-term, like most of their Delta habitat restoration.**

3. EIS Coordination

- DWR and the Lead Federal agencies have a number of different interpretations as to how the compliance process is going to be done, including range of alternatives considered, purpose and need, and general content. Difference between DWR and Lead Federal agencies appears considerable; for example, DWR is seeking only one alternative in the EIS/EIR while USFWS estimated a minimum of at least 6, and DWR wants to only look at the delivery of full contract amount while USFWS, NMFS, and EPA want to look at 'up to' full contract amounts (which means would also look at lesser amounts).
- DWR has fired the HDR project manager without consultation with the Lead federal agencies. DWR is seeking input from the Federal agencies as to who the new project manager should be. HDR is the firm compiling the EIS/EIR.
- Lead Federal agencies are seeking greater control over the consulting team (HDR).
- **There is a new team being set up for the five Federal agencies to coordinate on the EIS. We will participate on this team. Unclear if this will eliminate out need to attend the DWR BECT meetings on the EIS/EIR.**
- USFWS questioned USACE dealing with Paul Marshall or Marc Ebbin of DWR on anything relating to the EIS. They do not speak for the Lead Federal agencies on any matter.
- **The EIS is intended to be fully inclusive of all information USACE needs to make decisions, including section 10, 404 and 408 decisions. Supplementing the EIS is not considered a viable option. We need to ensure all information we need is in the EIS.**

4. Purpose and Need Statement

- The purpose and need statement in the EIS/EIR must be consistent with USACE 404(b)(1) guidelines.
- **The new team being set up for the five Federal agencies to develop the EIS will also be the team that the five federal agencies will develop a purpose and need statement which fully meets the needs of NEPA and the Clean Water Act section 404.**
- USFWS questioned USACE dealing with Paul Marshall or Marc Ebbin of DWR on anything relating to the Clean Water Act section 404. They do not speak for the Lead Federal agencies on any matter.

5. Assurances

- **The Lead Federal agencies have no idea if there are or are not assurances in any of the USACE regulations. We need to provide the lead federal agencies with information on assurances under our section 10 and 408 processes.**

USACE Action Items:

- ✓ We need to give a 408 process timeline (and where we are now in the process) to the lead Federal Agencies so they can incorporate that into their schedule developments.

- ✓ We need to review the BDCP HCP for things which look like they are of concern to USACE, such as things which could affect flood risk or the ship channels. Any areas of concern and information needs to further review should be identified to the lead Federal agencies.
- ✓ We will participate on the five Federal agency team being set up for the development of the EIS.
- ✓ We need to ensure all information we need is in the EIS.
- ✓ The new team being set up for the five Federal agencies to develop the EIS will also be the team that the five federal agencies will develop a purpose and need statement which fully meets the needs of NEPA and the Clean Water Act section 404.
- ✓ We need to provide the lead federal agencies with information on assurances under our section 10 and 408 processes.